

**REMARKS:**

Claims 1-19 are currently pending with claims 1, 14, and 16 being the independent claims. Claims 1-5 and 7-19 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Hurkmans et al. (U.S. Patent No. 3,524,575). Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hurkmans et al. (U.S. Patent No. 3,524,575).

Applicants respectfully traverse these rejections.

**CLAIMS 1-5 AND 7-19 ARE PATENTABLE OVER THE REJECTION UNDER 35 U.S.C. § 102:**

Examiner has rejected claims 1-5 and 7-19 under 35 U.S.C. §102(b) as being allegedly anticipated by Hurkmans et al. (3,524,575). In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

For there to be anticipation under 35 U.S.C. § 102, “each and every element” of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986) (“absence from the reference of any claimed element negates anticipation.”); *In re Schreiber*, 128 F.3d 1473, 1477, 44 U.S.P.Q.2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Crop. V. Lydall, Inc.*, 159 F.3d 534, 545, 48 U.S.P.Q. 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 U.S.P.Q. 2d 1655, 1657 (Fed. Cir. 1990).

Independent claims 1, 14, and 16 recite elements that Hurkmans et al. fails to teach or even fairly suggest. Claim 1 recites that the “main body including at least one leg-bending portion and a staple crown-forming portion [are] reciprocatingly interconnected.” (Claim 1, lines

4-5). Claim 14 recites that the “main body, that includes at least one leg-bending portion, [is] interconnected with a staple crown-forming portion by a take-up device configured to permit reciprocation of said staple crown-forming portion relative to said main body portion.” (Claim 14, lines 5-7). Claim 16 recites that the “crown-forming portion [is] displaceably interconnected by an elastic element to a main body portion including said first leg-bending portion and said second leg-bending portion.” (Claim 16, lines 17-18). Therefore, each of the independent claims requires that the crown-forming portion either reciprocate or be displaceable relative to the main body portion. This also requires that the crown-forming portion either reciprocate or be displaceable relative to at least one leg-bending portion as recited in each independent claim.

Hurkmans *et al.* fails to disclose a staple forming device including a crown-forming device which reciprocates or is displaceable relative to at least one leg-bending portion. In the office action dated August 6, 2004, the Examiner associates elements of Figure 3 in Hurkmans *et al.* with claim elements in claims 1, 14, and 16 as follows: first leg-bending portion as 94, second leg-bending portion as 95, and crown-forming portion as 96. The Examiner indicates that these elements are interconnected. Nevertheless, Hurkmans *et al.* fails to disclose a crown-forming portion (element 96) which either reciprocates or is displaceable relative to at least one of the leg-bending portions (either element 94 or 95) as recited in the independent claims 1, 14, and 16.

Hurkmans *et al.* does not disclose each and every element of the independent claims 1, 14, and 16 because the crown-forming portion (element 96) is rigidly interconnected to the leg-bending portions (elements 94 and 95). In fact, as indicated in Figure 3 of Hurkmans *et al.*, the crown-forming portion and the first and second leg-bending portions are formed from a single, rigid former element 90. Hurkmans *et al.* does not teach any relative movement between the crown-forming portion and the leg-bending portions since they are made from the same piece of material. Therefore, Hurkmans fails, *inter alia*, to disclose each and every element of the claims. In view of the above, Applicant requests the reconsideration and withdrawal of the rejection of claims 1-5 and 7-19 under 35 U.S.C. §102(b). Applicants believe that claims 1, 14, and 16 are now allowable.

Applicants submit that claims 2-5, 7-13, 14, 15, and 17-19 are also now allowable. As dependent claims inherently include all the elements from claims from which they depend, the

dependent claims 2-5, 7-13, 14, 15, and 17-19 should also be allowable as being dependent from allowable claims 1, 14, and 16.

CLAIM 6 IS PATENTABLE OVER THE REJECTION UNDER 35 U.S.C. § 103(a):

Claim 6 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Hurkmans et al. (3,524,575). Applicants request that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Applicants submit that claim 6 is allowable. As dependent claims inherently include all the elements from claims from which they depend, the dependent claim 6 should also be allowable as being dependent from allowable claims 1.

Given the above, Applicant requests that the rejection of claim 6 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

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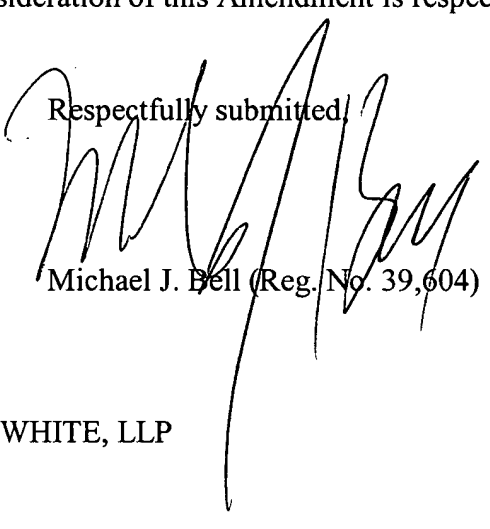
**CONCLUSION:**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Michael Bell at (202) 383-6500.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

  
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